Dunbinclipped Inc. t/a Great Clips *and* Henrietta Hindle. Case 5–CA–29452

August 21, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND ACOSTA

The General Counsel seeks a default judgment[1] in this case on the ground that the Respondent has failed to file a legally sufficient answer to the complaint. Upon a charge filed by Henrietta Hindle on January 17, 2001, the General Counsel of the National Labor Relations Board issued a complaint on March 26, 2001, against Dunbinclipped Inc., t/a Great Clips, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Copies of the charge and complaint were properly served on the Respondent. On April 27, 2001, the Respondent filed an answer and motion for bill of particulars, which generally denied the allegations in the complaint.

On May 2, 2001, the General Counsel filed a Motion for Summary Judgment with the Board. On May 15, 2001, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 29, 2001, the Respondent filed a response and opposition, with an attachment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that a respondent "shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial." Section 102.20 further provides that "any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge," shall be deemed admitted unless good cause is shown. On April 27, 2001, the Respondent filed an answer and motion for bill of particulars, in which the Respondent stated, inter alia: "The allegations in the Complaint are denied. Respondent demands strict proof thereof."[2]

In his Motion, the General Counsel contends that the Respondent's general denial is legally insufficient because it fails to specifically admit, deny, or explain each of the facts alleged in the complaint. In its response and opposition (response), the Respondent stated, in relevant part, as follows:

> 1. SPECIFIC DENIAL. The Complaint's two or three "facts"[1] were denied. A more specific denial would have unfairly burdened the Respondent, i.e., the literal meaning would shift depending on whether the last three clauses of the sentence in paragraph Four were read as dependent or mispunctuated independent clauses.

[1] Described in about fifty words comprising two sentences.

Complaint paragraph 4 reads as follows:

> On or about December 1, 2000, Respondent's employee Henrietta Hindle concertedly complained to Respondent, regarding the wages, hours and working conditions of Respondent's employees, by calling [Respondent's vice president] Ed Spirko and telling him that all of the stylists were ready to start finding other jobs, because they thought that it was unfair for management to terminate the employment of stylists Kim Carrington and Tammy Bennett.

The Respondent further asserts in its response that it provided the Region a memorandum setting forth a detailed chronology. A copy of this memorandum, dated February 16, 2001, is attached to the response. It is a copy of the Respondent's precomplaint statement of position submitted to the Region during its investigation of the charge.

We find that the Respondent's answer does not constitute a proper answer to the complaint allegations under Section 102.20 of the Board's Rules and Regulations because it fails to address any of the factual or legal allegations of the complaint, and therefore is legally insufficient under the Board's Rules.[3] We are also unpersuaded

[1] The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file a legally sufficient answer to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

[2] Sec. 102.20 of the Board's Rules and Regulations also requires that answers be filed within 14 days from service of the complaint. Pursuant to Sec. 102.20, the Respondent's deadline for filing an answer was April 9, 2001, which the Respondent failed to meet. However, by letter dated April 13, 2001, the General Counsel extended the Respondent's answering deadline until April 27, 2001. Thus, the timeliness of the Respondent's answer is not at issue.

[3] See *Jet Electric Co., Inc.*, 334 NLRB 1059 (2001) (finding insufficient a letter stating, "I deny all complaints directed at me . . . or my company"); *Central Apex Reproductions*, 330 NLRB 1163 fn. 1 (2000) (finding insufficient an answer "admitting" a fact not alleged in the complaint, and further stating that "[e]ach allegation of fact not herein above specifically admitted, is specifically and categorically denied, and strict proof required thereof"); *Eckert Fire Protection Co.*, 329 NLRB 920 (1999) (finding insufficient a memorandum stating, "After talking with my attorney, I have the following response to the charges: I deny any and all charges referenced above"); *Triple H Fire Protection, Inc.*, 326 NLRB 463, 463–464 (1998) (finding insufficient a letter

by the Respondent's claim that a more specific answer would have been unfairly burdensome. Complaint paragraph 4 is not a model of correct punctuation, but it is not ambiguous. Further, the response offers no explanation whatsoever for the Respondent's failure to specifically deny or explain the allegations in the complaint's other paragraphs. Thus, we find that the Respondent has failed to show good cause for the insufficiency of its answer. In addition, we do not accept as an amended answer the precomplaint statement of position that the Respondent attached to its response. "[S]tatements of position, including information submitted during the precomplaint investigative phase, are insufficient to constitute answers to complaints." *Mail Handlers Local 329 (Postal Service)*, 319 NLRB 847 (1995).[4]

Our dissenting colleague states that he would not grant default judgment here because answers that simply repeat "denied" for every individual complaint paragraph are routinely accepted, and the difference between such an answer and the Respondent's single denial of all allegations "is not one of substance." If one could be certain that every respondent that answers a complaint with a general denial actually intends to deny *each* separate allegation in the complaint, then the specificity requirement of Section 102.20 would at least arguably be satisfied. But that is not the case. Indeed, in its response, the Respondent made it clear that it had intended in its answer to deny only "two or three 'facts'" set forth in "two sentences" of the complaint. The General Counsel, for example, has no way to know whether jurisdictional facts are denied and thus whether jurisdiction is to be litigated before the administrative law judge. Yet, under our colleague's approach, this answer would suffice to put at issue every allegation in the complaint, with the result that the General Counsel would be needlessly put to the proof on such matters as service of the charge, jurisdiction, and agency. Thus, the procedural uncertainty created here by the Respondent's failure specifically to admit or deny each allegation in the complaint perfectly illustrates why Section 102.20 requires specificity: to "facilitate the joining of the issues and reduce the area of litigation . . . in order that the rights of parties may be more quickly established and wrongs sooner rectified." *Pipeline Construction Workers, Local 692 (Fulhgum Construction Corp.)*, 248 NLRB 1315, 1316 (1980). Thus, the specificity requirement of Section 102.20 is not a mere formality but rather springs from a concern about the substantive rights of the parties. See *Eckert Fire Protection Co.*, supra, 329 NLRB at 921.

Our dissenting colleague feels that we have ignored the Respondent's answer to the complaint. In light of the above discussion, it is quite clear that we have not. Rather, we have considered the answer and found it to be clearly inadequate under our Rules.

In the absence of good cause being shown for the failure to file a legally sufficient answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a franchise with four salons located throughout the State of Maryland, including a salon in Belair, Maryland, has been engaged in providing discount hair care services to its customers. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000, and purchased and received at its four salons goods and materials valued in excess of $5000 directly from points located outside the State of Maryland. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

On or about December 1, 2000, the Respondent's employee Henrietta Hindle concertedly complained to the Respondent by telling its vice president, Edward Spirko, that all of the stylists were ready to start finding other jobs because they thought that it was unfair for management to terminate the employment of stylists Kim Carrington and Tammy Bennett. Because Hindle engaged in this conduct, and to discourage employees from engaging in such concerted activities, the Respondent discharged Hindle on or about December 4, 2000.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

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denying "any and all accusations"); *Breeden Painting Co.*, 314 NLRB 870 fn. 1 (1994) (finding insufficient a letter stating that respondent "denies the complaint"); *Parisian Manicure Mfg. Co.*, 258 NLRB 203, 204 (1981) (finding insufficient a letter stating, "We Deny the allegations stated in the notice you sent us").

[4] We note that the Respondent is represented by counsel in this proceeding. Cf. *Central States Xpress*, 324 NLRB 442 (1997) (accepting precomplaint statement of position as answer where, inter alia, respondent was acting pro se); *Mid-Wilshire Health Care Center*, 331 NLRB 1032 (2000) (same).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by discharging employee Henrietta Hindle, we shall order the Respondent to offer her full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed. We shall also order the Respondent to make Hindle whole for any loss of earnings and other benefits suffered as a result of the discharge. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any reference to Hindle's discharge, and to notify her in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Dunbinclipped Inc., t/a Great Clips, Belair, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees for engaging in concerted activities and in order to discourage employees from engaging in concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Henrietta Hindle full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Henrietta Hindle whole for any loss of earnings and other benefits resulting from her unlawful discharge, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Henrietta Hindle, and within 3 days thereafter, notify her in writing that this has been done and that her discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good-cause shown, provide at a reasonable place to be designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by Region 5, post at its facility in Belair, Maryland, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 4, 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

CHAIRMAN BATTISTA, dissenting.

It is not unusual for a respondent/defendant, in answer to a complaint in a civil case, to simply say "denied" with respect to individual paragraphs of the complaint. Such denials are routinely accepted. In the instant case, the Respondent stated, albeit once, that *all* of the allegations are denied. The difference between the two forms of denial is not one of substance.

My colleagues say that they are not sure that the Respondent denied the allegations of the complaint. My colleagues have seemingly ignored the most important document—the answer to the complaint. The answer, filed on April 23, stated that "the allegations of the complaint are denied. Respondent demands strict proof thereof." One wonders what would be plainer.

Instead of focusing on the answer to the complaint, my colleagues focus exclusively on the response to the Motion for Summary Judgment. That response is to be read in the context of the motion to which it responds. The

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

motion had asserted that the general denial of the answer was not sufficient. The response to the motion explained that specific denials were not used because of the multiple character of the allegations of complaint paragraph 4.

Irrespective of whether that response is a valid explanation of why the answer contained a general denial (rather than a specific one), the critical fact is that the *answer contained a denial*. There could be no confusion on the General Counsel's part. With particular respect to jurisdiction, the General Counsel could either seek a stipulation of fact or be prepared to prove the allegation at trial.

Accordingly, I would not take the drastic step of imposing a forfeiture on Respondent's right to contest the allegations of the complaint. I would not grant default judgment.[1]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge you or otherwise discriminate against you for engaging in concerted activities and in order to discourage you from engaging in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Henrietta Hindle full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Henrietta Hindle whole for any loss of earnings and other benefits resulting from her unlawful discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Henrietta Hindle, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that her discharge will not be used against her in any way.

DUNBINCLIPPED INC. T/A GREAT CLIPS

[1] I adopt the dissenting opinions in *All American Fire Protection, Inc.*, 336 NLRB 767 (2001); *Jet Electric Co., Inc.*, 334 NLRB 1059 (2001); and *Eckert Fire Protection Co.*, 329 NLRB 920 (1999).